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jlb/kdb.09

3302

Paper No. 9

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**GROUP 3300**

In re Application of  
Jay French, et al.  
Application No. 08/432,280  
Filed: May 1, 1995  
Attorney Docket No. 014655-001

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This is a decision on the petition under 37 CFR 1.137(b), filed July 29, 1996, to revive the above-identified application.

The petition is granted.

This application became abandoned for failure to timely respond to the non-final Office action mailed December 21, 1995, which set a three month shortened statutory period for filing a response. No extensions of time having been obtained pursuant to the provisions of 37 CFR 1.136(a), the date of abandonment of this application is March 22, 1996. Therefore, since this petition was filed within one year of the date of abandonment, the petition complies with the one year filing period requirement in 37 CFR 1.137(b).

Extensions of time under 37 CFR 1.136 are available only if asked for "prior to or with the response." In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response expired. Therefore, no extension fees are due on a petition for revival. In view thereof, the extension of time fee submitted with the petition is unnecessary. Petitioner may request a refund of the \$450 extension fee submitted by writing to the Office of Finance, Refund Section. A copy of this decision should accompany petitioner's request.


The statement that the "abandonment was unintentional" does not comply with 37 CFR 1.137(b).<sup>1</sup> However, the statement presented will be accepted and construed as meaning that the "delay was unintentional." If this is an incorrect interpretation in view of the new rules, petitioner is required to provide a statement to that effect.

The application file is being forwarded to Group 3300.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 308-6908.



JoAnne Burke  
Legal Instruments Examiner  
Office of Petitions  
Office of the Deputy Assistant Commissioner  
for Patent Policy and Projects

  
Karen D. Babington  
Petitions Examiner

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<sup>1</sup> Effective September 20, 1993. See "Changes in Procedures for Revival of Patent Applications and Reinstatement of Patents," published at 1154 Official Gazette 35 (September 14, 1993).